

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Angelucci et al.	Confirmation No.:	7696
Serial No.:	09/942,333	Art Unit:	3733
Filed:	August 29, 2001	Examiner:	Shaffer, Richard R.
For:	LAMINOPLASTY IMPLANTS AND METHODS OF USE	Attorney Docket No.:	8932-546

**PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION
UNDER 37 C.F.R. § 1.137(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Notice of Abandonment mailed December 11, 2006, Applicants hereby file a Petition to Revive Unintentionally Abandoned Application under 37 C.F.R. § 1.137(b). The required reply is filed concurrently herewith, which consists of a Notice of Appeal, a Pre-Appeal Brief Request for Review, and a Pre-Appeal Brief Conference Request.

The delay in filing the required reply was unintentional, and to a large extent, unavoidable. A Final Rejection was mailed by the USPTO on May 4, 2006. Before the two-month date, Applicants filed an Amendment on June 28, 2006. This amendment was received by the USPTO (*see* Postcard stamped June 28, 2006, copy attached as Exhibit A), but apparently lost thereafter by the USPTO. As the six-month date neared, and Applicants still had not received a response from the USPTO, the undersigned phoned the Examiner on November 2, 2006 to inquire as to the status of the application. (*See* Interview Summary mailed November 13, 2006, copy attached as Exhibit B). The Examiner suggested that Applicants resubmit the previously-filed Amendment, which Applicants did on November 3, 2006 (still within the 6-month period). (*See* Resubmission of Amendment filed November 3, 2006 (with Postcard stamped November 3, 2006), copy attached as Exhibit C).

Applicants also spoke with Examiner Eduardo Robert regarding this matter, who confirmed that Applicants should resubmit the Amendment, but that the case would go abandoned if claims remained rejected. Examiner Robert stated this would be the case

regardless of the USPTO's fault in failing to process Applicants' original timely-filed Amendment on June 28, 2006, and that there was nothing Applicants' could have done to avoid it.

After the 6-month period lapsed, Applicants received an Advisory Action mailed November 24, 2006 affirming the pending rejections of the claims. Thereafter, Applicants received a Notice of Abandonment mailed December 11, 2006.

Applicants therefore submit that but for the USPTO's error in failing to process Applicants' timely-filed Amendment, the instant application would not have gone abandoned in the first place. In that sense abandonment was unavoidable, and certainly the entire delay was unintentional.

Accordingly, Applicants hereby request that the requisite fee under 37 C.F.R. § 1.17(m) of \$1500.00 be waived, as the USPTO was responsible for the abandonment of this application. If not waived, please charge this fee, and any additional fee(s) that may be due, to Jones Day Deposit Acct. No. 503013.

Respectfully submitted,

Date: April 11, 2007

<u>s/ Brent P. Ray</u>	<u>54,390</u>
Brent P. Ray	(Reg. No.)
JONES DAY	
222 East 41st Street	
New York, New York 10017	
(212) 326-3939	

Exhibits A-C

Exhibit A

Express Mail No. EV452776541US First Class Mail () D

Date Mailed June 28, 2006

Serial No. 09/942,333 Filed August 29, 2001

Inventor Engelbrecht et al.

For Amplification of Inventions and Methods of Use

- | | |
|---|--|
| <input type="checkbox"/> Affidavit/Declaration | <input type="checkbox"/> Fee Address Indication Form |
| <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Response | <input type="checkbox"/> Fee Certification |
| <input type="checkbox"/> Application _____ pages | <input type="checkbox"/> Issue Fee Transmittal |
| <input type="checkbox"/> _____ claims _____ drawing sheets | <input type="checkbox"/> Notice of Appeal |
| <input type="checkbox"/> Assignment <input type="checkbox"/> Cover Sheet | <input type="checkbox"/> Oral Hearing Request/Confirm |
| <input type="checkbox"/> Brief (in triplicate) | <input type="checkbox"/> Petition to Extend Time _____ months |
| <input type="checkbox"/> Declaration & Power of Attorney | <input type="checkbox"/> Petition under 37 C.F.R. _____ |
| <input type="checkbox"/> Executed <input type="checkbox"/> Unexecuted <input type="checkbox"/> Copy | <input type="checkbox"/> Power of Attorney |
| <input type="checkbox"/> Declaration of Inventor(s) | <input type="checkbox"/> by Assignee <input type="checkbox"/> Associate <input type="checkbox"/> with Revocation |
| <input type="checkbox"/> Executed <input type="checkbox"/> Unexecuted <input type="checkbox"/> Copy | <input type="checkbox"/> Request for Correction of Filing Receipt |
| <input type="checkbox"/> Design Application | <input type="checkbox"/> Sequence Listing w/Computer Readable and Paper Copy |
| <input type="checkbox"/> Disclaimer <input type="checkbox"/> Disclaimer Fee | <input type="checkbox"/> Small Entity Settlement |
| <input type="checkbox"/> Disclosure Statement <input type="checkbox"/> Form PTO-1449 | <input type="checkbox"/> Status Letter |
| <input type="checkbox"/> w/refs. <input type="checkbox"/> w/o refs. | <input type="checkbox"/> Transmittal Letter |
| <input type="checkbox"/> Drawings, Formal | |
| _____ Sheets _____ Figures | |

Other: _____

File No. 8932-546 Sender: BMR/BPR



Exhibit B



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/042,333	08/29/2001	Christopher M. Angelucci	✓ 8932-546	✓ 7696
51832	7390	11/13/2006		
JONES DAY 222 EAST 41ST STREET NEW YORK, NY 10017-6702				
EXAMINER SHAFFER, RICHARD R				
ART UNIT		PAPER NUMBER		
3733				

DATE MAILED: 11/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

*Statement of the substance
of the Interview
Due 12/13/06.*

Interview Summary	Application No. 09/942,333 ✓	Applicant(s) ANGELUCCI ET AL.	
	Examiner Richard R. Shaffer	Art Unit 3733	

All participants (applicant, applicant's representative, PTO personnel):

(1) Richard R. Shaffer

(3) Brent Ray

(2) Eduardo Robert

(4) _____

Date of Interview: 02 November 2006

Type: a) ☒ Telephonic b) ☐ Video Conference

c) ☐ Personal [copy given to: 1) ☐ applicant

2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes

e) ☒ No.

If Yes, brief description: _____

Claim(s) discussed: none


Identification of prior art discussed: none


Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER


Richard R. Shaffer
Examiner's signature, if required

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135, (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant's representative contacted the Office to inform the examiner that case 09/942,333 is in fact not about to be abandoned. Rather, a reply made on June 28th, 2006 in response to the Final Office Action on May 4th, 2006 was not processed by the Office despite a post card showing receipt of the amendment. It was recommended that applicant file a petition along with a copy of the June 28th, 2006 amendment and the post card showing receipt to be awarded the earlier response date. Applicant stated that a response would be made in the next couple of days to avoid any possible abandonment.

Exhibit C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Angelucci et al.	Confirmation No.:	7696
Serial No.:	09/942,333	Art Unit:	3732
Filed:	August 29, 2001	Examiner:	Shaffer, Richard R.
For:	LAMINOPLASTY IMPLANTS AND METHODS OF USE	Attorney Docket No:	8932-546

RESUBMISSION OF AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450


Sir:

In response to the Final Rejection mailed May 4, 2006, and before two months elapsed, Applicants previously submitted an Amendment Under 37 C.F.R. § 1.116 mailed via Express Mail (No. EV452776541US) to the USPTO on June 28, 2006, along with a return receipt postcard. Though Applicants received the postcard back from the USPTO stamped June 28, 2006 (attached as Appendix A), the USPTO appears to have lost the Amendment. Accordingly, Applicants are not submitting a petition under 37 C.F.R. § 1.10(e) because Applicants' Amendment was in fact received by the USPTO, but lost thereafter.

Applicants herewith submit a copy of the Amendment as-filed on June 28, 2006 (attached as Appendix B), and respectfully request that the Examiner consider the Amendment as if presented to the Examiner within two months of the mailing of the Final Rejection.

Respectfully submitted,

Date: November 3, 2006


Brent P. Ray
For: Brian M. Rothery
(Reg. No. 35,340)

54,390
(Reg. No.)

JONES DAY
222 East 41st Street
New York, New York 10017
(212) 326-3939

Express Mail No. EV 91332922845 First Class Mail ()
Date Mailed December 3, 2006
Serial No. 091942,333 Filed August 29, 2001
Inventor Angelucci et al.
For Transdermal Implants and Methods of Use

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|---|--|
| <input type="checkbox"/> Affidavit/Declaration | <input type="checkbox"/> Fee Address Indication Form |
| <input type="checkbox"/> Amendment <input type="checkbox"/> Response | <input type="checkbox"/> Fee Certification |
| <input type="checkbox"/> Application _____ pages | <input type="checkbox"/> Issue Fee Transmittal |
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| <input type="checkbox"/> Declaration of Inventor(s) | <input type="checkbox"/> _____ by Assignee <input type="checkbox"/> Associate <input type="checkbox"/> with Revocation |
| <input type="checkbox"/> Executed <input type="checkbox"/> Unexecuted <input type="checkbox"/> Copy | <input type="checkbox"/> Request for Correction of Filing Receipt |
| <input type="checkbox"/> Design Application | <input type="checkbox"/> Sequence Listing w/Computer Readable and Paper Copy |
| <input type="checkbox"/> Disclaimer <input type="checkbox"/> Disclaimer Fee | <input type="checkbox"/> Small Entity Settlement |
| <input type="checkbox"/> Disclosure Statement <input type="checkbox"/> Form PTO-1449 | <input type="checkbox"/> Status Letter |
| <input type="checkbox"/> w/refs. <input type="checkbox"/> w/o refs. | <input type="checkbox"/> Transmittal Letter |
| <input type="checkbox"/> Drawings, Formal | |

_____ Sheets _____ Figures
Other: Resubmission of Amendment, copy of Amendment,
copy of PTO-1449
File No. 8932-546 Sender: BMR/BPR